HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1415 of 2004 (S/S)

1. Ved Prakash Chauhan S/o Hira Lal
2. Nihal Singh S/o Net Ram Singh
3. Vasudev Sharma S/o Sri Salik Ram Sharma
4. Shyam Lal S/o Ram Ji Mal
5. Radha Prasad ... Petitioners

Versus

1. State of U.P. through
   Chief Secretary, Education, Lucknow
2. State of Uttaranchal through
   Secretary Education, Dehradun
3. Union of India through
   Personnel Dept. Delhi
4. Advisory Committee ... Respondents

Hon'ble J. C. S. Rawat, J.

By means of this writ petition, the petitioner have challenged the order dated 11.9.2001 passed by the Central Government.

Brief facts of this case are that the petitioners belong to the plain are in the State of U.P. and they have their entire education in the plain areas of U.P.. The petitioners were appointed in the Hill Cadre of the State of U.P. as Teachers. The petitioners have submitted that they have deep roots in the plain areas of U.P., they have studied in the State of U.P. and they have family ties in the State of U.P. Moreover, the petitioners have their assets-moveable and immovable within the State of U.P. After the creation of the State of Uttaranchal, it was provided that option must be given to the employees working in the State of U.P. either to remain in the U.P. or to go to State of Uttaranchal. The petitioners also submitted their option for the State of U.P.

Heard Sri S. S. Yadav learned counsel for the petitioners and learned Standing Counsel for the State and perused the record.

It is not disputed that the petitioners made their representations dated 24.6.2001, 23.5.2001, 27.5.2001, 29.5.2001 {Annexure-2 to the writ petition}. During the pendency of these representations the Advisory Committee has passed the order dated 17.4.2001 by which the employees under Hill cadre rules have been allocated finally to the State of Uttaranchal.

The learned counsel for the petitioners has referred the judgment and order dated 25.3.2004 passed by the Division Bench of this Court, in which it has been observed that the petitions should be disposed of finally in terms of the order dated 3.6.2003. The said order needs to be quoted here:-

> *"Heard Sri Alok Singh, Sri C. D. Bahuguna, Sri S.S. Yadav, Sri Paresh Tripathi, Sri J.P.Joshi, Sri Sharad Sharma, Sri A.K.Joshi and other learned counsel for rhte petitioners, Sri Govind Singh Bisht learned Senior Standing Counsel, Government of India, Sri P.M.N. Singh, learned Additional Advocate General, State of U.P. and learned C.S.C.*
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> *Various counter affidavits filed by the respondents do not furnish any reply that the petitioners' representations were considered individually and reasoned orders were passed in each case. Only bold statement has been made that the representations were considered and rejected and thereafter the orders was passed.*
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> *Clause (b) of Section 76 of the Reorganization Act provides that the representation is to be decided if made by the employee and that is provides clearly that each individual has to be given opportunity to make representation and each representation should be decided by a speaking order. Therefore, by way of interim measure, we*

provide that copy of these writ petitions as representation and file fresh reasoned orders as required under section 76 of the Reorganization Act and they be sent to the Government of India which shall consider the recommendation of the Advisory Committee and pass fresh orders in respect of each of the petitioners. The Advisory Committee shall pass appropriate orders within one month. The Advisory Committee shall pass appropriate orders within one month. Thereafter, Government of India shall take decision within fifteen days.

Learned counsel for the State of U.P. argued that capacity of State, to absorb the employees who opted for the State of U.P. and finally allocated, may be considered. We find no substance in the contention of the learned counsel for the State of U.P. in view of the fact that advertisement to fill up the huge number of posts was made, and which was stayed by this Court in these writ petitions. List after two months."

On facts and law, the case is squarely covered by the judgment and order dated 25.3.2004 passed in W.P. No.4446(S/S)/2001 (Annexure-6 to the writ petition).

In view of the above, the present writ petition is disposed of finally in terms of the aforesaid order dated 25.3.2004.

(J.C.S. Rawat, J.)

Dated 06.12.2004

LSR